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APR 06 2007

In re Application of
Gerald W. Kearby
Application No. 10/790,319
Filed: March 1, 2004
Attorney Docket No. NT 1001 - US

OFFICE OF PETITIONS
DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 6, 2007.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).


The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, "[p]er NeuroTone, Inc.'s (the assignee) request of January 19, 2007 transfer all patent files to client", does not meet any the conditions set forth in 37 CFR 10.40.

In this regard, the record indicates that on June 7, 2004, a Statement under 37 CFR § 3.73(b), signed by Gerald W. Kearby as CEO for SPL Development, Inc. was filed. Additionally, a power of attorney executed by co-inventor Gerald W. Kearby was also submitted appointing the practitioners associated with Customer Number 40518. As assignee, NeuroTone, Inc., does not appear to be an assignee in this application, as stated by requestor David A. Levine in the request, the request to withdraw the attorneys associated with Customer Number 40518 cannot be granted at this time.

A courtesy copy of this decision is being mailed to applicant at the address noted in the petition.

All future communications from the Office will continue to be directed to the above-listed address until otherwise properly notified by applicant.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at 571-272- 4618.


Frances Hicks
Petitions Examiner
Office of Petitions

cc: Gerald Wayne Kearby
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